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June 24, 2008

BY HAND DELIVERY

Honorable Kevin Nathaniel Fox
United States Magistrate Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 540
New York, New York 10007-1312

MEMO ENDORSED

Re: Eric J. Lesane v. the New York City Department of Correction, et al.,
08 CV 3990 (RMB) (KNF)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department handling the defense of the above-referenced matter on behalf of defendant New York City Department of Correction. In that capacity, I write to respectfully request a sixty day enlargement of time, from today until August 22, 2008, within which the New York City Department of Correction may answer or otherwise respond to the complaint. I write directly to the Court because plaintiff is incarcerated and proceeding *pro se* in this matter. This is the first request for an enlargement of time.

The complaint alleges that plaintiff was assaulted on March 11, 2008 by Correction Officers of the New York City Department of Correction and sustained physical and/or psychological injuries. Before we can adequately respond to the complaint, we will need to conduct an investigation into the facts of the case. Given the allegations in this case concerning plaintiff's physical and/or psychological injuries, an enlargement of time will allow this Office to forward to plaintiff for execution an authorization for the release of his medical records. Accordingly, defendant requires this enlargement so that this Office may obtain the underlying documentation, properly investigate the allegations of the complaint and fulfill its obligations under Rule 11 of the Federal Rules of Civil Procedure.

In addition to the New York City Department of Correction, plaintiff names Deputy Warden Jones, Deputy Diaz, Officer Sanchez, Officer Harris, Officer Villette, Captain Cort, Officer Nieves, Warden Shaw and an unidentified correction officer as defendants. From a review of the docket sheet, it appears that Deputy Warden Jones, Officer Villette, Officer Sanchez, Officer Harris, ✓

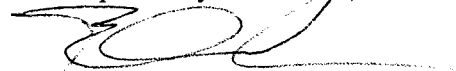
6/25/08
Application denied.
On or before July 25, 2008, the
defendant(s) represented by the
New York City Law Department shall
answer or otherwise respond to the
complaint.
SO ORDERED:
Kevin Nathaniel Fox, U.S.M.J.

Captain Cort and Officer Nieves may have been recently served with a copy of the summons and complaint.¹ I apologize to the Court and plaintiff for the fact that each Officer's answer appears past due, and respectfully request that this Office be granted sixty days from today, until August 22, 2008, within which to investigate service, resolve representation issues, and if appropriate, to file an answer or otherwise respond to the complaint on behalf of any individual defendants who have been served with a copy of the summons and complaint in this action.

Pursuant to Section 50-k of the New York General Municipal Law, this Office must determine, based on a review of the case, whether we may represent each Officer. Each Officer must then decide whether he wishes to be represented by this Office. See Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)). If so, we must obtain each Officer's written authorization. Only after this procedure has been followed can we determine how to proceed in this case.

In view of the foregoing, it is respectfully requested that the Court grant the within request. Thank you for your consideration herein.

Respectfully submitted,



Brian Francolla
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Mr. Eric Lesane (By mail)
Plaintiff *Pro Se*
DIN # 241-05-1706
Otis Bantum Correction Center
16-00 Hazen Street East
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¹ According to the docket sheet, the individual identified in the caption of the complaint as Warden Shaw has not been served with a copy of the summons and complaint, and service appeared to have been attempted but unexecuted on Deputy Diaz. Upon information and belief, these individuals have not requested legal representation from the Office of the Corporation Counsel. Without making any representation on behalf of these individuals, it is respectfully requested that, in the event they were served, their time to respond to the complaint similarly be enlarged so that their defenses are not jeopardized while representational issues are being decided.